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P R O C E E D I N G S

IN OPEN COURT

(Defendants present)

THE COURT: Okay. The matter on the Court's calendar at this time is United States of America vs. Njie, Barrow, Manneh, and Faal, Criminal File No. 15-35 and Criminal File 15-28.

Let's start with the appearances for the United States.

MR. KOVATS: Good morning, Your Honor. Assistant United States Attorney Charles Kovats and Trial Attorney Richard Scott for the United States.

THE COURT: Good morning to both of you.

MR. SCOTT: Good morning.

THE COURT: For the defendants?

MR. BIRRELL: Good morning, Your Honor. Andy Birrell and Cherno Njie.

MR. RICHMAN: Robert Richman and Joseph Friedberg for Alagie Barrow, who is also present.

THE COURT: Mr. Mohring.

MR. MOHRING: Andrew Mohring representing Papa Faal, who is here with us this morning as well.

THE COURT: Mr. Larsen.

MR. LARSEN: Mark Larsen for Banka Manneh, who is present before the Court.

1 THE COURT: Good morning to all of you. We are
2 here for what is on the docket called an evidentiary
3 hearing. So why doesn't somebody tell me what the order of
4 the hearing is going to be.

5 Mr. Mohring.

6 MR. MOHRING: Your Honor, what we would like to do
7 this morning is first to play what has been marked as
8 Defendants' Exhibit 1, which is a sentencing video, copies
9 of which have been provided to the Court and the prosecution
10 and the Probation Office.

11 THE COURT: Is that *The Gambia Documentary*?

12 MR. MOHRING: Yes.

13 THE COURT: Okay.

14 MR. MOHRING: We will then seek to introduce
15 testimony from two of the defendants and then what we would
16 like to do, Your Honor, as communicated to the Court, is to
17 present argument about common issues that apply to all of
18 the defendants. There are a series of guideline questions,
19 again, that apply to each of these men.

20 And so that's the ground that we would propose to
21 cover today before then proceeding tomorrow to the actual
22 just individual case-by-case sentencings.

23 THE COURT: Okay.

24 MR. MOHRING: We have a second exhibit that we
25 will be introducing. I can give a copy to the Court, Your

1 Honor, now if the Court wishes. It's a document. Just so
2 you have it. But we will be moving the introduction of
3 this. We listed it as an exhibit. If I may approach?

4 THE COURT: Sure.

5 MR. MOHRING: There are two copies.

6 THE COURT: This is marked as Defendants'
7 Exhibit 2.

8 MR. MOHRING: Yes, Your Honor. And we'll get to
9 that and we'll discuss that over the course of this morning.

10 THE COURT: So we're going to start with the
11 video, then?

12 MR. MOHRING: Yes.

13 THE COURT: For the record, I was furnished with a
14 copy of the video, which is entitled *The Gambia Documentary*,
15 a few days ago. So I have viewed this prior to today, but
16 I'll take another look this morning.

17 MR. MOHRING: Okay.

18 THE COURT: Anything from the government?

19 MR. KOVATS: No, Your Honor, other than to say we
20 have communicated with Mr. Mohring and defense counsel about
21 the schedule and so we're prepared to adopt that same
22 schedule and we'll proceed as Mr. Mohring suggested so long
23 as it's okay with the Court.

24 THE COURT: Fine with me so far. We'll see how it
25 goes.

1 Mr. Mohring.

2 MR. MOHRING: Your Honor, I have it on the DVD. I
3 don't know if the Court has the DVD keyed up on the system.

4 THE COURT: I don't, but I think I am about to
5 have it keyed up. This is beyond my pay grade here.

6 (Pause)

7 THE COURT: Any of the counsel have any expertise
8 of how to get this thing working? Because I do not.

9 MR. MOHRING: We also have it on a laptop, Your
10 Honor.

11 (Pause)

12 MR. MOHRING: Let me just try hitting the play
13 button.

14 THE COURT: Okay.

15 (Pause)

16 THE COURT: Are we expecting any more visitors in
17 the courtroom, the gallery, that anybody knows of? Because
18 if this goes down, we can go back up to 7. The only
19 difference between 7 and here is there's one more row of
20 seats and I think we have probably got -- I think they could
21 fit up there almost just as easily.

22 (Pause)

23 (Video played)

24 THE COURT: Can we stop it just for one minute.
25 If any of you who are on that side of the courtroom

1 (indicating), if there is any room on the other side, you
2 probably have a better view of the big screen.

3 MR. MOHRING: There's also a screen --

4 THE COURT: That's right, we've got that screen
5 too. But if anybody wants to look at the big screen, they
6 can move over.

7 Okay. Without further ado, let's get going, then.

8 (Video played)

9 MR. MOHRING: I apologize, Your Honor.

10 (Pause)

11 (Video played)

12 (Pause)

13 THE COURT: Why don't we stop it for a minute and
14 let me see counsel at the bench.

15 (Discussion off the record at sidebar)

16 (Video played)

17 MR. MOHRING: Thank you, Your Honor. With that,
18 the defense moves the admission of Exhibit Number 1, the
19 video.

20 THE COURT: Any objection?

21 MR. KOVATS: No, Your Honor.

22 THE COURT: Exhibit 1 will be received.

23 So what's on the calendar now or next? We're
24 going to take a break, but I just want to see what's ahead.

25 MR. BIRRELL: The next thing that will happen is

1 that Mr. Chernon Njie will be called to testify.

2 THE COURT: Why don't we take our morning recess,
3 then. Let's make it 20 minutes. We'll come back at quarter
4 to 10:00, I guess.

5 For those of you who are unfamiliar with the
6 building, if you go out that door (indicating) and take
7 a right and then take another right, there are bathrooms
8 down the hallway, I think both men and women.

9 Be back in 20 minutes.

10 MR. BIRRELL: Thank you, Judge.

11 MR. MOHRING: Thank you, Your Honor.

12 (Recess taken at 9:22 a.m.)

13 * * * * *

14 (9:46 a.m.)

15 **IN OPEN COURT**

16 THE COURT: Mr. Birrell.

17 MR. BIRRELL: Thank you, Your Honor. We call
18 Chernon Njie.

19 THE COURT: If you would come up here, sir, and we
20 will swear you in. If you would raise your right hand.

21 (Witness sworn)

22 THE COURT: Take the witness chair, please. We'll
23 start your testimony by having you give us your full name
24 and if you would please spell your last name.

25 THE WITNESS: Chernon Njie, N-j-i-e.

1 THE COURT: Counsel, you may proceed.

2 MR. BIRRELL: Thank you.

3 (Cherno Njie)

4 DIRECT EXAMINATION

5 BY MR. BIRRELL:

6 Q. Mr. Njie, let's begin with a little bit of a timeline.

7 You were born in 1957; is that right?

8 A. That is correct.

9 Q. And you were born in The Gambia?

10 A. In The Gambia, in Banjul.

11 Q. Banjul, which is the capitol city?

12 A. The capitol, that's correct.

13 Q. Okay. And then in 1965 The Gambia became independent of
14 Britain; is that right?

15 A. That is correct.

16 Q. And then in 1970 The Gambia became a republic?

17 A. That is correct.

18 Q. All right. Then you left The Gambia in 1983?

19 A. That is correct.

20 Q. And came to the United States?

21 A. That's correct.

22 Q. And you didn't return until 1996; is that right?

23 A. That's right.

24 Q. Now, the judge has a lot of this information already in
25 written form, but we'll work together and summarize it here.

1 So what happened was you finished high school in
2 The Gambia?

3 A. That is correct.

4 Q. And then you worked in a bank for about four years?

5 A. That's right.

6 Q. Okay. And then you came to the United States for your
7 college education?

8 A. That is correct.

9 Q. And ended up living in Austin, Texas, and graduating
10 from the University of Texas at Austin with special honors;
11 is that right?

12 A. That is correct.

13 Q. Okay. Then you worked for the government of the State
14 of Texas for a bit?

15 A. That's right, for nine years.

16 Q. What did you do there, briefly?

17 A. Well, I administered a program. It's a housing program
18 called the Federal Low-Income Housing Tax Credit Program.

19 Q. Then you started some businesses of your own?

20 A. I resigned from the State to open my own consulting
21 firm, that's correct.

22 Q. And what kind of businesses do you own?

23 A. I own a real estate development and construction
24 business.

25 Q. And during the period of time we've been discussing, you

1 were married and had a son who is now 25?

2 A. 25, that's correct.

3 Q. And he's an engineer who lives in Texas?

4 A. That's right, mechanical engineer.

5 Q. Mechanical engineer.

6 And you have a new family -- newer family?

7 A. A newer family. Three girls.

8 Q. And what are their ages?

9 A. Newborn and a one-year-old and a three-year-old.

10 Q. What we're interested to help the judge understand
11 through your testimony is how you came to be involved in
12 this matter. Okay?

13 A. Yes.

14 Q. And would you describe yourself as a political person at
15 the time you came to the United States?

16 A. Well, I was always interested in politics and ideas, and
17 that started in The Gambia. I wasn't interested in parties
18 and politics as such, but the ideology of the day, so to
19 speak, which was either communism, socialism, or capitalism.

20 I grew up in the '70s when the East/West conflict
21 was very fierce and there was the competition with the
22 communist block. And then there was the Non-Aligned
23 Movement in Gambia and Gambia was part of the Non-Aligned
24 Movement. A lot of Asian and African countries subscribed
25 to nonalignment.

1 THE COURT: Let me just stop you for just a
2 moment. Would you try to speak up just a little louder and
3 maybe get -- is the green light on?

4 THE WITNESS: All right.

5 THE COURT: That's better.

6 THE WITNESS: Thank you, Your Honor.

7 MR. BIRRELL: I think it is on, Your Honor.

8 BY MR. BIRRELL:

9 Q. All right. So did there come a time when you became
10 more active in political thinking and movements as it
11 pertains to The Gambia?

12 A. Yes. It's an evolutionary process. When I came to the
13 U.S., for the most part I concentrated on working here and
14 building a family. Events in The Gambia in the '90s -- the
15 '94 coup, I had left the Gambia 11 years before that
16 happened, so I was paying attention, but intermittently, not
17 very often.

18 Q. So the '94 coup was the military coup under which Jammeh
19 came to power?

20 A. That is correct.

21 Q. And at the time that that occurred, you had family in
22 The Gambia?

23 A. Yes, and still do.

24 Q. Who was -- the family that you have has lived there this
25 entire time; is that right?

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[REDACTED]

[REDACTED]

1 Q. So you live in Texas and you've done very well, true?

2 A. Yes, I have.

3 Q. Okay. You have, safe to say, millions of dollars?

4 A. That is correct.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 Q. Now, later in the, say, early middle 2000s did there
13 come a time when you started to meet with some other -- meet
14 with, talk with other Gambians in the diaspora?

15 A. Yes, that is correct. The catalog of atrocities in
16 The Gambia is long and as somebody who grew up in The Gambia
17 who remembered The Gambia as a peaceful, stable country,
18 this became an issue of great concern. I had been paying
19 attention to what's been going on and for me the breaking
20 point really came around 2012 with the execution of those
21 nine prisoners.

22 Q. Let's talk about that for a minute just so we make sure
23 we're being complete here. So this occurred in about
24 August, was it?

25 A. August 2012, that's correct.

1 Q. And tell the judge what happened.

2 A. Well, the president decided to execute nine prisoners
3 who were being held in prison for various crimes without any
4 due process and this was done on a whim, basically. And
5 what was striking about this is that the bodies of the
6 prisoners were not even returned to the families for burial
7 and there was a lot of speculation that he had used them --
8 he believed in witchcraft and dabbles into a cult and all
9 kinds of issues, so there was a lot of rumor that, and I
10 believe some of those, that he had used some of them for
11 those kinds of rituals. So that really for me was the
12 seminal moment. It got to me real hard.

13 Q. So what happened next in the progression of things here,
14 then?

15 A. Well, I reached out to a number of Gambians and I
16 convened a meeting in Austin of some prominent Gambians who
17 had been active in the opposition movement to the president.

18 Q. When you say "convened," where was the meeting?

19 A. This was in Austin.

20 Q. Which is your home?

21 A. My home, that's correct.

22 Q. And why was it held in Austin?

23 A. Well, I was the convener of the meeting and it was also
24 because Austin doesn't have a lot of Gambian community, in
25 fact, I'm the only family of Gambia that I know of, so the

1 purpose of the meeting is to provide a safe place where
2 Gambians can meet and talk about things. So I convened the
3 meeting.

4 Q. So who came?

5 A. There were a dozen Gambians across the country and from
6 the United Kingdom.

7 Q. And this meeting occurred at a hotel?

8 A. At a hotel, yes.

9 Q. And so how many days was the meeting? Do you remember?

10 A. Two days.

11 Q. What took place at the meeting?

12 A. Discussions about background information. I wanted to
13 find out -- because I had been gone for a while, I wanted to
14 re-engage with the Gambian community to find out what can be
15 done to change matters back home. So the first thing I did
16 was to talk to the people who have been active in the arena
17 and find out what they know and perhaps they can guide me in
18 formulating a plan of action.

19 Q. What did you learn had been going on?

20 A. What I learned was that various organizations had been
21 working to put pressure on the regime through the imposition
22 of economic sanctions, for example, through the State
23 Department and also through the EU and through the British
24 government as well, as well as in the west African region
25 through ECOWAS. I also learned that various organizations

1 had been working together to help strengthen the opposition
2 parties back home. So it was a wealth of information that I
3 needed to put my hands around and to understand what's been
4 going on.

5 Q. Did there come a time when you met Jxxxx?

6 A. Nxxxx?

7 Q. Yes.

8 A. Yes, I met Nxxxx.

9 Q. Just so the Court understands, he is the brother of the
10 woman who we saw speaking a lot on the DVD?

11 A. Nxxxx is the brother of Sxxxx Jxxxx, that's correct.

12 Q. And Nxxxx was killed, is that what happened?

13 A. That is correct, he was killed in Gambia.

14 Q. And so you were introduced to him?

15 A. That is correct, I was introduced to Nxxxx by Nxxxx's
16 sister, Sxxxx.

17 Q. And then did you talk and meet, or how did you
18 communicate at first?

19 A. Yes, we exchanged text messages and talked on the phone.

20 Q. And what did he tell you?

21 A. Well, we had -- he explained to me his passion for
22 working towards changing The Gambia and some of the
23 activities he's been involved with with others of like mind.
24 Eventually we decided to meet and discuss things
25 face-to-face.

1 Q. And where did you meet?

2 A. We met in Austin.

3 Q. He came to see you?

4 A. He came to see me, that's correct.

5 Q. And did he give you any information when he came to see
6 you?

7 A. Yes, he did. He talked to me about a group that he was
8 a part of that had been formed and was working towards
9 ousting Jammeh, essentially.

10 Q. Did he tell you how long the group had been together?

11 A. No, he didn't say specifically how long, but he said the
12 group was formed.

13 Q. And he was a military man; is that right?

14 A. He was a captain in the Kentucky National Guard.

15 Q. And did he ask you to do anything in connection with
16 this?

17 A. He indicated to me that they were looking for financial
18 assistance, yes.

19 Q. Did he ask for a certain amount of money or what did he
20 say to you?

21 A. Well, he said they were putting a budget together and
22 they will let me know what that was.

23 Q. And then did there come a time when you received the
24 budget?

25 A. Yes, yes, I did eventually get the budget of the amount

1 required.

2 Q. Did you have another meeting with him?

3 A. I had another meeting with him, yes, at my residence as
4 well.

5 Q. And that was in January of 2014?

6 A. Well, the initial meeting was January of 2014. There
7 was a subsequent meeting in the summer of 2014.

8 Q. Okay. And through him did you meet Mr. Sanneh?

9 A. That's correct. I eventually met Sxxxxxx also at my
10 residence later that year in 2014.

11 Q. All right. Sxxxxxx was another person who went to
12 The Gambia and was killed?

13 A. That's correct. Sxxxxxx was a lieutenant colonel in the
14 Gambia National Army.

15 Q. Let's talk about him a little bit.

16 THE COURT: Why don't you spell his last name at
17 least for the reporter.

18 MR. BIRRELL: Thank you, Your Honor. It's
19 S-x-x-x-x-x.

20 THE COURT: Thank you.

21 BY MR. BIRRELL:

22 Q. Colonel Sxxxxxx was a graduate of Sandhurst; is that
23 right?

24 A. That is correct.

25 Q. And also a graduate of the U.S. War College?

1 A. That's correct.

2 THE COURT: And Sandhurst is the equivalent of our
3 West Point?

4 THE WITNESS: That's correct. It's the U.K.,
5 British equivalent of West Point.

6 BY MR. BIRRELL:

7 Q. And Sxxxxx lived in Baltimore, Maryland, near
8 Washington?

9 A. Yes.

10 Q. Can you explain to Judge Kyle your understanding and
11 impression of Sxxxxx and what you thought of him.

12 A. Well, Sxxxxx was a very impressive military officer and
13 he attended Sandhurst and National War College and did his
14 master's here. And I've met some other Gambian military
15 folks before, but he was by far the most impressive in terms
16 of his extensive contacts within the Gambian military. He
17 had been head of the training school, became intimately
18 familiar with the workings of the Gambian National Army, and
19 also commanded the elite presidential guard for Yahya Jammeh
20 before his dismissal. So he had a lot of credibility.

21 Q. Okay. So what happened was Sxxxxx was -- he was the
22 head of Jammeh's guards?

23 A. Presidential guard, that's correct.

24 Q. So he was -- the presidential guard is essentially the
25 personal guard of Jammeh?

1 A. Well, yes, that's right.

2 Q. Okay. And then he, Sxxxxx, had some sort of falling out
3 with Jammeh and left the country, left The Gambia in 2012?

4 A. That's correct, yes.

5 Q. And came to the United States?

6 A. Yes.

7 Q. And you learned that the person in charge of this
8 enterprise was Sxxxxx; is that what happened?

9 A. Yes, he was the military branch behind it.

10 Q. Now, you also learned, from Sxxxxx and the others,
11 learned that Sxxxxx was in communication with a military
12 attaché; is that right?

13 A. That is correct.

14 Q. And tell the Court what you learned about who this
15 person was and what was the communication.

16 A. Sxxxxx reported to me his meeting with the U.S. military
17 attaché in Senegal, who is based in Senegal, that is. The
18 meeting took place in Washington, D.C. area. This would
19 have been about late summer of 2014.

20 Q. What was your understanding of the role of the military
21 attaché at the Senegal Embassy?

22 A. Well, my understanding was that this was a cover for the
23 CIA, basically.

24 Q. What did Sxxxxx tell you --

25 MR. KOVATS: Your Honor, I'm going to just object

1 as to speculation on that point.

2 THE COURT: The answer will stand, but I
3 understand your concerns.

4 BY MR. BIRRELL:

5 Q. We're letting the Court know what your understandings
6 were.

7 A. Yes.

8 Q. So what was it that Sxxxxx told you about the
9 conversation -- first of all, how many conversations did he
10 have with this military attaché?

11 A. Sxxxxx indicated that he had been in touch with the
12 attaché since he left the country to come to the U.S.

13 Q. So for two years or so?

14 A. Yeah, at least two years and they've developed a
15 relationship. He indicated the attaché was very helpful
16 during his transition to the U.S. to seek political asylum
17 after his dismissal.

18 Q. I'm not sure about this. Was it the case that Sxxxxx
19 and this military attaché had attended the War College
20 together?

21 A. I'm not sure about that.

22 Q. Okay. In any event, Sxxxxx came to the United States,
23 sought political asylum, and apparently received it; is that
24 your understanding?

25 A. He was in the process of getting that, yes.

1 Q. Okay. What did Sxxxxxx report to you about his
2 conversations with the military attaché?

3 A. Sanneh reported to me that he had a meeting with the
4 attaché in the Washington, D.C. area and the purpose of the
5 meeting was basically to inform him, that is, the attaché,
6 of an ongoing plot to overthrow the government.

7 Q. And so Sxxxxxx told you he informed the military attaché
8 of that?

9 A. That is correct.

10 Q. And did he, Sxxxxxx, tell you what the response was?

11 A. Yes. He said the attaché asked him whether he was
12 involved in it and he answered in the affirmative --

13 Q. Told him --

14 A. -- that he was.

15 Q. -- right?

16 A. Yes.

17 Q. Did he give -- did Sxxxxxx give you any other further
18 information about what the attaché said?

19 A. Yes. He said he asked the attaché what he thought the
20 U.S. reaction would be and he said the attaché said that the
21 U.S. will accommodate the new regime coming in.

22 Q. Now, you and I reviewed the discovery information
23 provided from the government, right?

24 A. Yes, that's correct.

25 Q. Okay. And we learned that in October of 2014 the FBI

1 received a report that Sxxxxx was involved in a planned coup
2 to overthrow The Gambia; is that right?

3 A. That is correct.

4 Q. Okay. Which is consistent with what you're telling me,
5 right?

6 A. That's right.

7 Q. Okay. Then in terms of some of the other information
8 that you learned, without giving a name, did there come a
9 time when you learned that one of the people involved in
10 Sxxxxx's operation, planned operation here, was an
11 active-duty U.S. military person?

12 A. That is correct.

13 Q. And that information you learned from a person involved
14 in the planning?

15 A. Yes.

16 Q. And did there come a time, again without using the name,
17 where you actually spoke to this person?

18 A. I spoke to the active-duty military personnel, that's
19 correct.

20 Q. Did the fact that you believed and learned that there
21 was an active-duty U.S. military person involved in this
22 influence your thinking as to the information you were
23 receiving from Sxxxxx about his conversations?

24 A. It did, yes.

25 Q. Can you explain to the Court how that happened.

1 A. Well, I believed Sxxxxx's report to me that he had this
2 conversation with the military attaché, and in effect the
3 way he described it to me was he got a green light. He
4 thought that this was a project the U.S. government would
5 support. My talking directly with the active-duty military
6 personnel also gave me an indication that we could have
7 support from the U.S. government.

8 Q. Why was that? Explain what you were thinking.

9 A. Well, my thinking is the relationship between Washington
10 and Banjul could scarcely be any worse and as somebody who
11 has followed the relationship over time, it has been a very
12 poisonous relationship entirely based on the appalling human
13 rights records of the Gambian president.

14 And the operating hypothesis is that nobody in the
15 U.S. government will shed a tear if Jammeh were overthrown.
16 Certainly if he were overthrown and held prisoner, I don't
17 think the United States government would call for his
18 reinstatement.

19 So Sxxxxx's conversation as well as my
20 conversation with this active-duty military guy bolstered my
21 own thinking that this is an enterprise that the U.S.
22 government would support and supported.

23 Q. All right. Originally your role, as you're relating it,
24 was to provide money?

25 A. That is correct.

1 Q. And your role changed or expanded, let's say?

2 A. Yes.

3 Q. And was this done at the request of Colonel Sxxxxx?

4 A. Yes. My role was primarily as a financier of the
5 project, and we began to talk about what was to happen after
6 the fact. After we were successful in getting rid of the
7 regime, then what comes next. There was a vision already in
8 place regarding what should come up. There was supposed to
9 be a transitional government. There was supposed to be
10 fresh elections, a new constitution, some commissions of
11 inquiry for human rights, et cetera. So the framework was
12 already in place when I joined in and when I started talking
13 to Sxxxxx, he asked that I should consider the position of
14 an interim president.

15 Q. Did he tell you why he thought that would be a good
16 thing for you to do?

17 A. Well, his reasons were that he had talked to the other
18 guys and felt that I was a neutral figure, I was a fresh
19 face without any partisan links, and I would be an honest
20 broker during that interim period and that they didn't want
21 any military folks heading this project.

22 Q. And the understanding was you wouldn't stand for
23 election if you --

24 A. That is correct. This was an interim period in which
25 whoever served will not be eligible to stand for any

1 elections.

2 Q. And so this thinking then required that you would travel
3 to The Gambia?

4 A. That's correct.

5 Q. And is it correct that the reason you were willing to do
6 this was because you believed in Sxxxxxx?

7 A. I believed absolutely in Sxxxxxx and the entire team. He
8 was an impressive guy. I wouldn't have taken the risks that
9 I did if I didn't believe that this was an enterprise that
10 would succeed, and the confidence I had in him was absolute.

11 Q. So you did go to The Gambia?

12 A. Yes, I did.

13 Q. And you traveled under your own name?

14 A. Yes.

15 Q. And eventually you -- well, you went to Senegal first?

16 A. Yes.

17 Q. Which is right across the street, so to speak, from
18 The Gambia?

19 A. That is correct.

20 Q. Okay. And did you meet Sxxxxxx in Senegal?

21 A. Yes, we met in Senegal.

22 Q. When you met with Sxxxxxx in Senegal, did he report to
23 you that he had been interviewed by the FBI?

24 A. Yes, he did let me know that he was interviewed by the
25 FBI before he left on his flight to Senegal.

1 Q. And, again, you and I reviewed the discovery from the
2 government and we learned that some agents from the
3 Baltimore office of the FBI did interview Sxxxxxx at his home
4 December 16, 2014?

5 A. That's correct.

6 Q. And they did talk with him about whether he was planning
7 to overthrow the government of The Gambia or something
8 similar?

9 A. That is right.

10 Q. And he told them he was not?

11 A. He told them he was going to visit his son in Dakar.

12 Q. Which is the capitol of Senegal?

13 A. Of Senegal, that's correct.

14 Q. And so Sxxxxxx reported this same conversation to you in
15 Senegal?

16 A. That's right.

17 Q. Did Sxxxxxx tell you whether or not he had any other
18 conversations with federal law enforcement officers?

19 A. No, no.

20 Q. And so what happened is that the members of the group
21 got together in The Gambia?

22 A. That's right.

23 Q. And do you remember what day you all were together
24 first?

25 A. We left Dakar I believe on the 26th, the day after

1 Christmas, to go to The Gambia.

2 Q. So this is December 26, 2014?

3 A. That's correct.

4 Q. And were you together in a house or a couple houses, or
5 how did it work?

6 A. We were in a house together. I think Sxxxxx was staying
7 there as well as Jxxxx. They were other houses somewhere
8 else where the other guys were staying.

9 Q. Now, what was the command structure as it related to the
10 group when you're in The Gambia?

11 A. Well, Sxxxxx had control over the group from a military
12 standpoint. I mean, this was, after all, a military
13 operation. Because of the extensive contacts he had in the
14 Gambian military, he was the intermediary. He was the guy
15 who decided what should be done and how and when.

16 Q. So Sxxxxx was the operational commander of the group?

17 A. That is correct.

18 Q. And he was receiving information from people inside the
19 Gambian government?

20 A. That is correct.

21 Q. And we're not going to talk about who they are?

22 A. That is correct.

23 Q. Some of them have been arrested, right?

24 A. Yes.

25 Q. All right. And based on this, then Sxxxxx made a

1 decision about what should happen next?

2 A. Yes.

3 Q. What did he decide first?

4 A. Well, the operation was to ambush initially the
5 president's motorcade and hold him prisoner.

6 Q. Okay.

7 A. And that plan was shelved after we learned that he would
8 be leaving town.

9 Q. Jammeh was leaving the country?

10 A. Was leaving the country, that is correct.

11 Q. And when did you all learn that fact?

12 A. We learned that I believe a day or two before he left,
13 actually.

14 Q. Do you know what day he left?

15 A. I think around the 27th.

16 Q. What was the next thought as far as a plan?

17 A. Well, the next thought was to try and seize the State
18 House.

19 Q. What did Sxxxxx say about why he thought that would be
20 an attainable goal?

21 A. Well, that was based on his own assessment of the
22 intelligence and the conversations he was getting with his
23 sources within the ranks. These were, after all, men he
24 commanded.

25 Q. And were presumably loyal to him?

1 A. That is correct.

2 Q. And so there was a first beginning of an attempt?

3 A. There was an attempt on the 29th to take over the State
4 House. That attempt was thwarted.

5 Q. What happened?

6 A. Well, the report we got back was that they decided not
7 to approach because it was too dangerous. They apparently
8 didn't get the kind of intelligence that they were looking
9 for.

10 Q. So who made the decision to abort the mission?

11 A. Sxxxxx made that decision.

12 Q. And where were you when this mission was occurring?

13 A. I was in a different location basically waiting for word
14 as to the outcome.

15 Q. So the 29th began, but didn't really get going; is that
16 what happened?

17 A. That is correct. The mission was aborted.

18 Q. So what happened next?

19 A. Well, they came back and decided that they will go and
20 see if they can do that the following day.

21 Q. Okay. That was December 30th?

22 A. That is correct.

23 Q. And what happened was that they did make that attempt?

24 A. They did, that's correct.

25 Q. And you were in a remote location --

1 A. Yes.

2 Q. -- more remote of a location?

3 In a house?

4 A. Yes.

5 Q. And the plan was that if it worked, then you would go
6 and offer yourself up as an interim person and begin the
7 transition to a full democracy?

8 A. That is correct.

9 Q. But that's not what happened?

10 A. No.

11 Q. What happened?

12 A. Well, what happened was they met heavy resistance at the
13 State House and there was a shoot-out in which we lost three
14 of our men.

15 Q. And what were their names?

16 A. Lxxxx Sxxxxx, Nxxxx Jxxxx, and Axxxxxxx Nxxxx.

17 Q. And so what did you do then?

18 A. Well, after we received the report that the attempt had
19 failed, we left the location where we were into Senegal and
20 eventually back to the U.S.

21 THE COURT: Counsel, could you try to keep your
22 voice up or get a little closer to the microphone.

23 MR. BIRRELL: Sure, Judge. Thank you.

24 BY MR. BIRRELL:

25 Q. So you went to Senegal and flew back to the United

1 States?

2 A. That is correct.

3 Q. And then when you arrived, you were arrested and the
4 court proceedings began?

5 A. That is correct.

6 THE COURT: When were you arrested? Do you
7 remember the date?

8 MR. BIRRELL: January --

9 THE WITNESS: January 2nd, I believe.

10 THE COURT: Thank you.

11 THE WITNESS: 2015.

12 BY MR. BIRRELL:

13 Q. So we're asking the judge to give you a sentence of
14 probation, right?

15 A. Yes.

16 Q. I want you to explain to the judge why he could feel
17 confident that you will continue to be a law-abiding
18 American citizen.

19 A. Your Honor, the circumstances surrounding this case I
20 describe as rather unique. It was a confluence of things
21 that came into place.

22 I was approached to provide financing for this
23 enterprise and it was headed by an individual of immense
24 stature in terms of the Gambian military who had extensive
25 contacts not only within the ranks of the armed forces, but

1 also within certain circles in the U.S. military.

2 I was convinced that this is an enterprise that
3 the government supported. That was based on my own
4 understanding of the nature of the relationship as well as
5 the conversations that were relayed to me by Sxxxxx, whom I
6 had a lot of respect in. That is why I signed up for it.

7 It also came as a culmination of 20 years of
8 working to try and bring about peaceful change in
9 The Gambia. I had been a part of that in providing
10 financial resources for various groups, including opposition
11 parties, to work within the system to bring about change.

12 And I regret my part in the fact that we broke
13 U.S. law in our zeal to change the government of The Gambia.
14 That was wrong, we shouldn't have done it, but I felt
15 obligated to help my country, my native country. I believed
16 that what we did was supported by the U.S. government, would
17 have advanced U.S. interests and the interests of justice.
18 And we won't do it again. I think it's become apparent that
19 the U.S. government didn't support the enterprise, but that
20 is after the fact.

21 And I believe that these things -- it's an
22 evolutionary process. Just like the Arab Spring happened in
23 Egypt and other countries, we have seen a flowering of this
24 same boldness among Gambians to stand up for their rights
25 and eventually it is Gambians on the ground who will have to

1 spearhead this effort to change their own lot. We're here
2 as former -- as native Gambians to help in that process, but
3 the task really remains for the Gambian people.

4 MR. BIRRELL: Thank you, Your Honor. I don't have
5 any other questions.

6 THE COURT: Counsel.

7 MR. KOVATS: Thank you, Your Honor.

8 **CROSS EXAMINATION**

9 BY MR. KOVATS:

10 Q. Good morning.

11 A. Good morning.

12 Q. So I want to just ask you a couple of questions about
13 your belief that the attempted coup was supported by the
14 United States government. First I wanted to talk to you a
15 little bit about your background, though, and your work as a
16 successful businessman.

17 A. That is correct.

18 Q. And in order to grow a business, oftentimes you need to
19 interact with other businesses; is that right?

20 A. Yes.

21 THE COURT: Counsel, could you keep your voice up
22 or get a little closer.

23 MR. KOVATS: Yes, Your Honor.

24 THE COURT: It's a large courtroom and there are
25 people in the back who I think probably are having some

1 trouble hearing you.

2 MR. KOVATS: Yes, Your Honor.

3 THE COURT: Thank you.

4 BY MR. KOVATS:

5 Q. Would you agree with the general proposition when you're
6 dealing with another business that you want to deal with
7 someone who is a decision-maker; is that right?

8 A. That is correct.

9 Q. And you don't want to attempt to make a bargain with a
10 potential business partner when you're not speaking with the
11 people who have the ability to bind that organization; is
12 that right?

13 A. Generally that is correct, yes.

14 Q. And so here what I'm questioning is your reliance on the
15 presence of a single enlisted soldier in the United States
16 military that caused you to think that the military was now
17 behind your effort. Would you agree with me that the Army
18 includes on active service more than 500,000 soldiers?

19 A. I do agree, but it was hardly that lone soldier alone on
20 which my decision was based.

21 Q. And would you agree with me that this single soldier
22 concealed from his command his role in this coup from the
23 beginning?

24 A. Well, I don't know what the single soldier concealed or
25 not.

1 Q. And when Lxxxx Sxxxxx left the United States to go
2 travel to the coup, you testified that he concealed from the
3 FBI the true intent of his travel; isn't that right?

4 A. Well, he said he told them he was going to visit his
5 son.

6 Q. So maybe that particular statement was true, but it
7 wasn't an honest description of the full measure of his
8 travel; isn't that right?

9 A. I actually don't know whether he visited his son or not
10 in Dakar. He could do both, I suppose.

11 Q. Right. But when asked if he was going abroad to
12 participate in a coup, he said no and that was false?

13 A. No, what he reported to me was he told them his mission
14 was to go and visit his son.

15 Q. As he was leaving the United States to participate in a
16 coup?

17 A. That is correct.

18 Q. This is a picture we've seen on the video and this
19 particular one comes out of exhibits filed by the defense
20 here. This is August of 2014 and it's a picture of,
21 obviously, the president of the United States with the
22 president of The Gambia.

23 And this would suggest, in fact, that the United
24 States, more so than the reports from a single soldier in
25 Germany, was not going to endorse the violent overthrow of

1 The Gambia; would you agree with that conclusion?

2 A. I don't think I can base my conclusion on this picture.

3 Q. Is it fair to say that you wanted to believe that your
4 effort was supported by the United States government even if
5 the evidence didn't support that belief?

6 A. No, I don't think so. My thinking was that, in fact,
7 the U.S. government was supportive. I mean, just looking at
8 the -- you're presenting a picture there. One of our
9 colleagues met with the State Department, for example, in
10 December of 2014, Banka Manneh, that is, in which Gambia was
11 discussed. The human rights record of The Gambia became a
12 topic for that and about that time the spokesperson of the
13 National Security Council, a lady by the name of Bxxxxxxxxx
14 Mxxxxxx, came out with a strong statement of condemnation of
15 Jammeh's human rights records. So in totality you can see
16 that the reasonable conclusion is that nobody will shed a
17 tear if Jammeh were overthrown.

18 Q. And why, then, was there the need to do the planning and
19 the resourcing all in private amongst yourselves if it was
20 something that you felt was well-supported by the United
21 States government?

22 A. Well, this was an initiative that the Gambians were
23 doing on their own and the signal was that this was
24 supported, and I had no reason to think otherwise.

25 Q. And so the signal is a conversation that one member of

1 the conspiracy had with a lieutenant colonel in the armed
2 forces who served as an attaché and your conversation with a
3 sergeant in Germany who was serving with the armed forces?

4 A. For example, when I discussed it with Sxxxxxx, his
5 encounter with the FBI, one of the things that came about
6 was while they interviewed him he told them what he was
7 going to do in Senegal.

8 Q. When they interviewed him he lied about the true purpose
9 of his travel?

10 A. What he said was, They didn't arrest me, did they?

11 Q. Because he said he was going to do something that was
12 lawful rather than to describe something unlawful?

13 A. So I'm just telling you my own frame of mind at the
14 time.

15 Q. Thank you.

16 A. Thank you.

17 MR. BIRRELL: No further questions.

18 THE COURT: Okay. Thank you. Sir, you may step
19 down. Thank you.

20 THE WITNESS: Thank you.

21 THE COURT: Mr. Mohring.

22 MR. MOHRING: Your Honor, the defense now calls
23 Papa Faal.

24 THE COURT: We'll start by swearing you in, so if
25 you would stop and raise your right hand, sir.

1 (Witness sworn)

2 THE COURT: If you would take the witness chair,
3 please. We'll start your testimony by having you give us
4 your full name and if you would please spell your last name.

5 THE WITNESS: My name is Papa Faal. Last name
6 spelled F-a-a-l.

7 THE COURT: Counsel, you may proceed.

8 (Papa Faal)

9 DIRECT EXAMINATION

10 BY MR. MOHRING:

11 Q. Mr. Faal, if you could pull the microphone to you and
12 try to speak into it.

13 You testify this morning as one of the four people
14 who stand convicted by guilty plea of violating the
15 Neutrality Act?

16 A. Yes.

17 Q. I want to just ask you some questions first about your
18 background before asking you to talk about your knowledge of
19 peaceful efforts to try to generate positive change in
20 The Gambia.

21 So if you would tell us, please, when and where
22 were you born?

23 A. I was born in The Gambia 1968.

24 Q. And did there come a time when you emigrated to the
25 United States?

1 A. I emigrated to the United States in 1991.

2 Q. So you came to the United States a man of how old?

3 A. I was, I think, 22 or 23. I've got to do the math.

4 Q. Okay. And as you testify here today, what is your
5 immigration or legal status in the United States?

6 A. I'm a U.S. citizen.

7 Q. When did you become a citizen?

8 A. I became a citizen in 2005.

9 Q. You have family here in the United States?

10 A. Yes, I do.

11 Q. Can you tell us who.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Q. And how long have you lived in Minnesota?

22 A. Since 2002.

23 Q. I want to ask you just a few questions about your
24 education. How far did you go in school in The Gambia?

25 A. I graduated from high school in The Gambia.

1 Q. Completed secondary education?

2 A. High school, yes.

3 Q. And then did you continue your education when you came
4 to the United States?

5 A. Yes, I did.

6 Q. Can you tell us about what you studied and what degrees
7 you have.

8 A. I studied at Strayer University in Washington, D.C.

9 Q. That's Strayer?

10 A. Strayer. That is S-t-r-a-y-e-r. It's a private
11 university. I started with the University of District of
12 Columbia and then I moved to Strayer University. That was
13 in 1994. I graduated in 1999 with a computer science
14 degree.

15 Q. And would that be a bachelor's level?

16 A. A bachelor's degree in computer science.

17 Q. Did you continue your education after that?

18 A. I continued my education at the University of Maryland
19 and I completed that in 2007 and 2008 consecutively with a
20 master's in technology management and a master's in business
21 administration.

22 Q. And are you studying now?

23 A. I am studying. I'm pursuing my doctorate degree in
24 business administration at Walden University.

25 Q. So your education focused, among other things, on

1 computers and computer systems?

2 A. Mostly systems, computer systems, but combined with
3 business, technology in business world.

4 Q. And were you employed -- have you been employed in the
5 area of your study?

6 A. I have. Since 1998 I was working as a system engineer
7 or network engineer. I have several certifications as a
8 network engineer.

9 Q. We've been talking about you as a student. Have you
10 also taught?

11 A. I taught at -- what is it again? I taught at a
12 university and a college, Howard University in Washington,
13 D.C. and then I taught here too. I taught computers and
14 business school classes.

15 Q. And so you mentioned that you've been employed in your
16 area of study. Are you working now?

17 A. I am a taxi driver.

18 Q. And is that because of conditions that have been a part
19 of your supervision?

20 A. Yes. I couldn't work in my field of study because of
21 conditions.

22 Q. Okay. So we've talked about education. We've talked
23 some about employment. Have you been engaged as a United
24 States citizen in the United States in public or military
25 service?

1 A. I served in the military for ten years.

2 Q. In which branches?

3 A. I served in the Air Force for seven years and then I
4 moved to the Army for commissioning. I spent three years
5 there.

6 Q. And what's your status as far as the military is
7 concerned now?

8 A. I left the military in 2002 honorably discharged, end
9 term of service.

10 Q. And in your service for the United States Army, where
11 did you serve?

12 A. I was posted in various locations: In McGuire Air Force
13 Base and then Andrews Air Force base in Washington, D.C. and
14 then I went to training in Georgia, Fort Benning, for a
15 little bit and then I went to Kentucky, that's where I did
16 my last tour, and I was deployed in Afghanistan.

17 Q. So you did a tour in Afghanistan?

18 A. Yes.

19 Q. You are a combat veteran?

20 A. Yes.

21 Q. Have you received any commendations or awards for your
22 military service from the military?

23 A. I did receive several commendations, I think about four
24 or five of them. I had the ISAF medal also from going
25 overseas in Afghanistan and then a combat badge, action

1 badge.

2 Q. Okay. And have you received medical treatment since
3 coming back from Afghanistan through the Veterans
4 Administration?

5 A. Yes. I do receive all my veteran treatments over there,
6 treatment for PTSD, anxiety and PTSD.

7 Q. And you have seen the presentence investigation report
8 that the Probation Office prepared as a part of this case?

9 A. Yes.

10 Q. Does that report accurately summarize the treatment that
11 you've received?

12 A. Yes.

13 Q. Does it also accurately summarize the awards and
14 commendations that you have received for your service to the
15 United States of America?

16 A. Yes.

17 Q. Okay. I want to ask you some questions about your
18 knowledge of efforts to bring about change peacefully in
19 The Gambia and I want to ask about a couple of different
20 areas of activity.

21 You've been here in court all morning?

22 A. Yes.

23 Q. And so you have seen the video, but also you understand
24 that the coup that brought Yahya Jammeh to power happened in
25 1994?

1 A. Yes.

2 Q. Can you tell us, what type of government did that coup
3 overturn?

4 A. It was a democratically-elected government, peaceful and
5 respect human rights and rule of law.

6 Q. The video that we all watched together this morning
7 mentioned several organizations that have been working in
8 the Gambian diaspora in the communities outside of
9 The Gambia itself to bring about change. Can you tell us,
10 please, the names of organizations that you're familiar with
11 that were active in that way.

12 A. There are many of them. Of course we have been in this
13 fight for a long time. For over 22 years we've been
14 fighting to try to get -- expose the plights of the Gambian
15 people to the international community. So we have several
16 efforts: [REDACTED]
17 which was a brainchild from our unprecedented conference in
18 Raleigh, North Carolina, to try to bring all the Gambian
19 organizations and their diaspora together so we can have one
20 mission.

21 Q. So let's talk about that. You said there was a
22 conference trying to bring everybody together in Raleigh,
23 North Carolina?

24 A. Yes.

25 Q. When did that conference happen?

1 A. That was in 2013.

2 Q. And did you attend and participate?

3 A. I did attend that conference.

4 Q. And out of that I think you used an acronym, but was it

5

6 [REDACTED] --

7 A. Yes.

8 Q. -- that emerged from that?

9 A. Yes, sir.

10 Q. And was the function or at least part of the idea behind
11 that committee to be an umbrella organization to coordinate
12 efforts?

13 A. To coordinate efforts between the organizations because
14 we have organizations in all parts of the world. We have
15 organizations in Great Britain, France. So CXXXXX brings
16 all those together to coordinate processes.

17 Q. And CXXXXX is C-X-X-X-X-X?

18 A. Yes.

19 Q. Among the organizations that were being coordinated, is
20 one [REDACTED]

21 [REDACTED]?

22 A. Yes, that's the one that is in the U.K.

23 Q. And do you know how long that organization has been --

24 A. That's been around, I think, in the '90s as well.

25 Q. Is [REDACTED] another of these

1 organizations?

2 A. Yes.

3 Q. I think you mentioned [REDACTED]?

4 A. Yeah.

5 Q. Is [REDACTED] another one of the
6 organizations?

7 A. That's another one also. Its mission is to raise funds,
8 centralize fund-raising activities so we can have a single
9 source of revenue where the revenue can be disseminated to
10 other organizations and functions that are promoting the
11 efforts for a peaceful change in The Gambia.

12 Q. And among -- so still talking now about [REDACTED]
13 [REDACTED], was some of the money that was generated and
14 raised by [REDACTED] used to fund opposition
15 candidates in The Gambia?

16 A. Yes. Not in particular individually, but the money is
17 given to them for their processes in terms of campaign, you
18 know, and grassroot activities.

19 Q. Okay. You've talked about some of the objectives of
20 these organizations, but I'm wondering if you could just
21 tell us, what were these organizations trying to accomplish?

22 A. Well, as I said before, our struggles have been long and
23 tedious. We have several organizations, individuals that
24 have participated very long and have passion for change and
25 to bring about peace and some hope for the people of

1 The Gambia, our people in The Gambia.

2 And the functions of this organization is to
3 engage the international community. We have met with
4 several, several communities. The EU, the European Union,
5 Dr. Janneh has been leading that. He met with several,
6 several key leaders and that's why the EU was able to
7 produce some of those requirements for Jammeh and hold on to
8 funds to make sure that, you know, democracy and human
9 rights return to The Gambia. The Commonwealth, the ECOWAS,
10 the United States here, we did a lot of protest, a lot of
11 protest here and coordinated protests in Europe, both Europe
12 and here over the years. We have met with state
13 representatives. We met with the State Department numerous
14 times. So all these organizations.

15 Letter-writing, we wrote several letters and
16 packages that we delivered to these lawmakers, all to bring
17 about a sense of exposure and seeking help for the -- to
18 ease the plights of the people of The Gambia.

19 Q. You mentioned interaction with elected representatives
20 of the United States government. Let me ask you a few more
21 questions about that.

22 A. Yes.

23 Q. So did you and others involved in these committees meet
24 with representatives and senators?

25 A. Yes.

1 Q. As best as you can remember, can you tell us the names
2 of some of the people that you worked with.

3 A. Here we met with Keith Ellison. We sat down and talked
4 to him about -- this was when the nine prisoners were
5 executed and Baba Leigh was held, and we pushed efforts to
6 highlight that these people -- for them to condemn the
7 execution and at the same time to release the prisoners who
8 have done nothing.

9 We have also given him a package. The package
10 contains a list of atrocities and the things that we would
11 like the United States to do, that is, to, one, execute a
12 travel ban for Jammeh and his people, his entourage, because
13 they frequent the United States and they loot the state's
14 funds to come down and spend it. So a travel ban was one of
15 the key things that we have been asking and at the same time
16 we want the United States to at least push for a change.

17 We met with Senator Klobuchar's office. We met
18 with Senator Al Franken and Betty McCollum's office here and
19 Senator Paulsen. In D.C. we met with Mark Meadows and Luke
20 Messer. And we had a long conversation also with the State
21 Department, Stephen Schwartz and his team, and we lay down
22 the conditions and the atrocities. That was fairly recent.

23 In fact, when we went to meet the State Department
24 we brought along a young lady whose father had disappeared
25 for a long time and she did not know where the father was,

1 so we brought her along so we can have Stephen -- at least
2 seek the United States to help the young lady to find -- at
3 least have a sense of where her father was.

4 Q. So we talked some about the Gambian organizations.
5 We've been talking about efforts to engage the legislative
6 branch through representatives in the United States.

7 Over what period -- and you said that the activity
8 of the organizations began in the '90s. Over what period of
9 time did you and others try to engage the United States
10 through its elected officials, what's the time frame?

11 A. I think it has been through that period of time because
12 I do remember in.

13 1997 we did, when the post president came here,
14 have a meeting with State Department to at least have a
15 conversation to say, you know, we don't want to go back to
16 power, but everything that we have worked for, the
17 democracy, the human rights, the rule of law that we have
18 worked for for all these -- for over 30 years, we watch
19 going down the drain. So the request is to help -- for the
20 United States to at least help restore those values back
21 into power. So as you can see, we've been pushing this in
22 1997 and in 2000 and then in 1998 and in various times. So
23 it's fairly numerous, yeah, until now.

24 Q. You mentioned the State Department, the executive
25 branch.

1 A. Yes.

2 Q. Was interaction and trying to engage the State
3 Department also a part --

4 A. Yes.

5 Q. -- of the activities?

6 A. Yes.

7 Q. Again, what kind of time frame did people work with the
8 State Department?

9 A. It has been numerous times. As I mentioned before, in
10 1997. And Banka, one of the defendants, have been going to
11 the State Department for a long time. I've been kept
12 abreast. I have known the efforts that he and his team have
13 led at the State Department. They're countless.

14 Q. We've been talking about branches of the American
15 government, the United States government. Were efforts made
16 to engage foreign governments in a similar fashion?

17 A. Yes. As I said, Dr. Jxxxxx, in addition to the former
18 vice president, Bxxxxx Dxxx, and --

19 Q. I'm sorry. Can you spell the last name.

20 A. The last name is Dxxx. D-x-x-x is how he spells his
21 name. And Jxxxx Bxxxxx. Bxxxxx is spelled B-x-x-x-x-x,
22 that's how it is spelled. He's a lawyer in England.
23 They've been lobbying the European Union as well as the
24 English -- Great Britain's parliament. They've been
25 lobbying there for a long time too.

1 Q. Have efforts been made to engage NGOs, nonprofit
2 organizations as well?

3 A. Yes. There has been -- again, this team has worked
4 really hard to engage the United Nations. The Human Rights
5 Watch, we have dealt with them numerous times also.
6 Recently when the vice president that I talked about or
7 spoke about, along with the political party leader, Oxxx
8 Jxxxxxx -- his last name is J-x-x-x-x-x -- came here, they
9 met with the United Nations in New York. That was
10 facilitated by Sxxx Mxxxxxx. He is here. And they came down
11 to here, Washington D.C. We met over there and we met with
12 the National Endowment for Democracy and the National
13 Democratic Institute.

14 Q. Is Amnesty International also among --

15 A. Amnesty International was amongst those that we dealt
16 with as well.

17 Q. You mentioned the United Nations and efforts to work
18 through the United Nations. Was the International Criminal
19 Court a part of those --

20 A. ICC was one of the efforts that was led by, again,
21 Dr. Jxxxxxx and Mxx Fxxxx. That's one of the guys
22 representing The Gambia. They filed a lawsuit against
23 Jammeh for the atrocities in The Gambia, requesting that he
24 needs to be brought and charged with crimes of humanity.

25 Q. You mentioned the conference in Raleigh. We saw

1 evidence on the video of demonstrations and rallies in the
2 United States.

3 A. Yes.

4 Q. Over what period of time were public demonstrations a
5 part of the activities that you --

6 A. The demonstrations have been really a part of our
7 efforts also. DUGA, led by Px Sxxxx Jxx here, have been at
8 the forefront of organizing demonstrations around the
9 country, along with the international Gambians in the
10 international -- abroad also, because we usually do
11 simultaneous demonstrations. When some of this is done
12 here, some is done in Great Britain and France and around
13 the world, all to make the world pay attention to the
14 plights of the Gambian people.

15 Q. You mentioned also efforts to influence the Gambian
16 political process from within.

17 A. Yes.

18 Q. Let me show you, Mr. Faal, what's been marked as
19 Defendants' Exhibit 2 and ask if that's a document that
20 you're familiar with that you helped prepare.

21 A. Yes.

22 Q. And this is a document that summarizes things that we've
23 been talking about, efforts on the part of the Gambian
24 diaspora to improve conditions in The Gambia after the 1994
25 coup?

1 A. Yes.

2 Q. Based on your review of this document, does it
3 accurately present the information that it contains?

4 A. In summary, yes.

5 MR. MOHRING: I would move the admission of
6 Defendants' Exhibit 2, Your Honor. Copies have been
7 provided to the Court and to counsel already.

8 MR. KOVATS: No objection, Your Honor.

9 THE COURT: Received. Any objection from
10 co-defendants? I assume not.

11 MR. BIRRELL: No, Your Honor.

12 THE COURT: Exhibit 2 will be received.

13 BY MR. MOHRING:

14 Q. Mr. Faal, events in The Gambia continue as recently as
15 appearing -- as recently as today's newspaper. Is it fair
16 to say that things have not gotten better; is that --

17 A. They have not gotten better.

18 Q. You've been charged as a defendant. The proceedings
19 that we're having today and tomorrow relate to your
20 sentencing and the sentencing of these other men, you
21 understand that?

22 A. Yes, I do.

23 Q. At some point -- and this is a case that for you began
24 in early January of 2015, right?

25 A. Yes.

1 Q. At some point this will be over. What are your plans --
2 you've been involved in peaceful efforts before. What are
3 your plans for the future as far as working to improve
4 conditions in The Gambia?

5 A. Well, like I said before, our struggle has been long and
6 tedious and very tough. We as a community have done so
7 much. Along with the defendants, they have -- we all have
8 done so much, from Banka being involved in activity, from
9 Alagie being involved in fund-raising and creating some
10 organizations for the fundings, from all the other people
11 that I have named here, we have been pounding the pavement
12 for over 22 years now. We have not left any stone unturned
13 and we have knocked on every door for organizations to
14 listen, for the international community to listen.

15 Our activity, our event -- our involvement in the
16 event of December 2014 has been somewhat, we feel, as the
17 last resort, that there is no other options because we have
18 explored -- so we thought, that we have explored everything,
19 as the evidence will show.

20 But the price of December 30th have been really
21 tremendous both emotionally and physically on us and our
22 families. Emotionally there has never been a day -- we lost
23 very, very close friends. Nxxxx and Lxxxx and Axxxxxx have
24 been almost brothers to us. Gambia is a very small
25 community. It seems everybody knows everybody else.

1 So the impact of our actions have been both in
2 The Gambia and it has been -- our families have gone through
3 so much uncertainty because day in and day out they are
4 probably wondering when they're going to be picked up. We
5 the same thing because we do have our families back there.
6 We don't know whether they are going to be picked up when we
7 woke up the next day.

8 [REDACTED]
9 [REDACTED]
10 [REDACTED] Just thinking about that
11 has been so tremendously impactful and hurtful, just
12 thinking what they have been going through.

13 Yahya Jammeh does not pick -- the government does
14 not just pick somebody and put you in a prison that has all
15 the amenities that we have here. It's a rathole. Just
16 thinking about those people, the families of those people
17 inside of that rathole is a psychological blow and a trauma
18 for them.

19 Thinking every day -- as I say, Nxxxx Jxxxx has
20 been a brother to us. Lxxxx Sxxxxx the same thing. There
21 has never been a day that I have not thought about them,
22 that there has never been a day that I wish the consequences
23 that had done -- that led to his unfortunate demise had not
24 happened. If we had actually foresaw the consequences of
25 our actions, we would not have taken that endeavor because

1 we have done so much.

2 And I'm hopeful that we will continue to work
3 diplomatically because we know that forceful takeovers of
4 governments and forceful means through change has
5 consequences and deadly consequences not only for the people
6 who actually die, but their families.

7 And I see Nxxxx's mother and I can barely look at
8 her because she never stopped crying because, one, she
9 didn't have the body of Nxxxx to close that -- to have a
10 closure because Yahya Jammeh did not give them that body.
11 Nobody knows what he did to them. That hurts. That hurts a
12 great deal. And Nxxxx being a war veteran, having no sense
13 of where he is right now day to day hurts a great deal.

14 It is not an option that I will recommend moving
15 forward for any of our organizations, for anybody for that
16 matter, because the consequences will live on for the rest
17 of our lives.

18 And we realize that we have other options. We've
19 been doing it for a long time. The road has been rough and
20 it will continue to be rough. As they say, Rome was not
21 built in one day.

22 So our liberties in The Gambia -- the Gambian
23 people's liberty will be achieved one day, but not through
24 forceful means. That's what I am aspiring to, that we can
25 continue to fight our fight peacefully like we have been

1 doing, that is, going to the international organizations,
2 engaging everybody until we achieve what we want to achieve
3 in The Gambia.

4 Q. Thank you, Mr. Faal.

5 MR. MOHRING: I have no further questions at this
6 point.

7 THE COURT: Thank you, sir. You may step down.

8 MR. MOHRING: I think --

9 THE COURT: Oh, I'm sorry.

10 MR. KOVATS: Thank you, Your Honor.

11 THE COURT: I forgot the government. I apologize.
12 Proceed.

13 MR. KOVATS: No, I don't, Your Honor.

14 THE COURT: Oh, you don't.

15 MR. KOVATS: I wasn't just following your lead. I
16 didn't even before you were going to excuse the witness.

17 Thank you for your testimony.

18 THE COURT: You may step down, sir.

19 THE WITNESS: Thank you.

20 THE COURT: Mr. Mohring.

21 MR. MOHRING: Your Honor, it's my understanding --
22 we have no other testimony to present. We would propose and
23 ask to be able to address the Court about legal issues of
24 common concern, to be able to discuss those once as they
25 apply to everybody, in anticipation of individual

1 sentencings coming after that.

2 THE COURT: Do you want to do it right now?

3 MR. MOHRING: Sure. If I could have just a
4 moment?

5 (Pause)

6 MR. RICHMAN: Your Honor, could we approach for a
7 moment?

8 THE COURT: Certainly. Do you want it on the
9 record?

10 MR. RICHMAN: No.

11 (Discussion off the record at sidebar between
12 the Court and counsel)

13 (Pause)

14 MR. MOHRING: Are you ready, Judge?

15 THE COURT: Mr. Mohring.

16 MR. MOHRING: Thank you, Your Honor. Your Honor,
17 I want to touch briefly on the ways in which, from the
18 common defense view, the sentencing guidelines just fail to
19 do justice to the circumstances and the facts of this case,
20 this offense and the events that surround it.

21 Section 5K2.0 is what I am going to be talking
22 about. That section of the sentencing guidelines allows,
23 indeed calls for a departure to the extent that the case
24 presents, and I quote, circumstances of a kind not
25 adequately taken into consideration.

1 THE COURT: That's 5K2 --

2 MR. MOHRING: 5K2.0, Your Honor. It's actually
3 one of the sections in the guidelines that appears entirely
4 capitalized, at least that discussion. I think we would
5 have noticed it otherwise.

6 From our view, Your Honor, this case presents four
7 separate considerations about which the facts are not in any
8 dispute that the guidelines simply don't touch. Those four
9 considerations can be seen as spectrums on which each of
10 these men fall on the far mitigating edge and so from that
11 standpoint there are four separate bases for 5K2.0
12 departures in this case.

13 Your Honor, I won't review the facts. The Court
14 has seen the video. The Court has seen the testimony of
15 these gentlemen. Significant joint submissions that touch
16 on these matters have been presented to the Court. The
17 human rights abuses of this regime are well-documented and
18 undisputed.

19 The language of "nations friendly to the United
20 States," nations who are our friends, appears in the
21 Neutrality Act and "friends" is defined as anybody against
22 whom we have not declared war. And we as a nation have not
23 declared war against anybody since World War II. We have a
24 wide spectrum of friends, then, if you will.

25 That spectrum runs from governments that are

1 positive and constructive and respectful of human rights to
2 governments that are not, to governments that are at the
3 extreme end, on the other side from Sweden, if you will, to
4 Saddam Hussein's Iraq.

5 And the location of the circumstances in this or
6 any case under the Neutrality Act on that spectrum, from our
7 view and from the guidelines view, should be relevant to
8 sentencing.

9 The need for punishment, the need for deterrence,
10 the enormity of the crime itself increases with the decency
11 of the regime. We submit that an effort to overthrow the
12 government in Sweden would be viewed in very different
13 light, and should be, by a court looking through the lens of
14 the Neutrality Act than an effort to change a regime such as
15 was present in Iraq or such as is present in The Gambia.

16 That is a spectrum for which each of these four
17 men come on the far mitigating side. That is a spectrum
18 that is in no way addressed by the sentencing guidelines and
19 so this alone is a basis for mitigation, for a downward
20 departure from the sentences -- from the ranges suggested by
21 the guidelines.

22 A second consideration, a second 5K2.0
23 consideration, is the effectiveness or ineffectiveness of
24 the international community. Again, the Court can imagine a
25 spectrum from a situation where international peaceful

1 efforts are working to a situation where they are not.

2 The offense of violating the Neutrality Act would
3 be of greater concern, it would be a more serious crime, it
4 would be a crime more deserving of punishment and deterrence
5 where people acted as these men did under circumstances
6 where positive change was already happening.

7 But clearly and demonstrably and emphatically it
8 was not and so this is a second spectrum in no way
9 considered by the sentencing guidelines on which each of
10 these men fall at the far mitigating end, a second basis for
11 a 5K2.0 departure.

12 A third variable, a third spectrum is the extent
13 to which the actions of the individuals who now stand before
14 the Court convicted of violating the Neutrality Act in which
15 their actions were either consistent or inconsistent with
16 declared foreign policy of the United States of America.

17 A more serious crime is committed by people who
18 fly in the face of American foreign policy and who are
19 brought before a court, before a court such as this, than by
20 individuals who act in ways that are consistent with the
21 declared statements and interests of the American foreign
22 policy establishment.

23 And the Court has heard some of this. The
24 Neutrality Act from the government's view has as a purpose
25 restricting private exercise of foreign policy or private

1 involvement in foreign policy. But the Neutrality Act
2 exists especially to restrict actions by individuals acting
3 in the foreign policy arena that are inconsistent with
4 declared policies of the United States of America.

5 I talked about the Neutrality Act. The Neutrality
6 Act defines as friends -- at least as it has been
7 interpreted by the court, our friends are anybody against
8 whom we have not declared war.

9 Very clearly the Jammeh regime and Jammeh himself
10 has declared war on the United States. He has said, "For
11 Muslims" -- "Promoting homosexuality and imposing it on
12 weaker or poorer nations is a declaration of war on both
13 religions and human existence. For Muslims this is a
14 declaration of war on Islam, a declaration of war against
15 Allah, a declaration of war on human existence for which
16 every true believer must be ready to lay down your life to
17 defend Islam, fighting the cause of Allah and defend human
18 existence." That's what he thinks of us.

19 In terms of what we think, there have been
20 responses, many responses, press releases, declarations from
21 the State Department. In response to those comments the
22 Secretary of State said, "We call on the government of
23 The Gambia to protect the human rights of all Gambians and
24 encourage the international community to send a clear signal
25 that statements of this nature have no place in the public

1 dialogue and are unacceptable."

2 More recently in 2013 President Obama made a
3 proclamation on the occasion of Human Rights Day and Human
4 Rights Week and what he said is: "It is our obligation as
5 free peoples to stand with courageous individuals who raise
6 their voices to demand universal rights. Under extremely
7 difficult circumstances and often at grave personal risk,
8 brave human rights defenders and civil society activists
9 throughout the world are working to actualize the rights and
10 freedoms that are the birthright of all human kind. The
11 United States will continue to support all those who
12 champion these fundamental principles and we will never stop
13 speaking out for the human rights of all individuals at home
14 and abroad. It is a part of who we are as a people and what
15 we stand for as a nation."

16 He goes on to talk about his administration
17 supporting free and fair elections, opposing efforts by
18 foreign governments to restrict the freedoms of peaceful
19 assembly, association, and expression.

20 What these men did was entirely -- and the
21 objectives that they were pursuing -- was entirely
22 in harmony with these declarations of United States
23 officials.

24 Whether the actions were in opposition to or in
25 conformity with declarations of American foreign policy is a

1 third spectrum, a third variable, if you will, that the
2 sentencing guidelines in no way address or embrace or
3 consider.

4 There is no dispute about the facts that operate
5 in this condition and those facts put these four men, again,
6 at the far mitigating end of that spectrum. This is a third
7 basis for a Section 5K2.0 departure.

8 The last variable within the 5K2.0 arena is the
9 altruism, if you will, of the defendants themselves. You
10 can imagine a spectrum on which people are acting for their
11 own personal aggrandizement to seize power for their own
12 benefit on one end and people who are acting genuinely in a
13 spirit of improving the lives and the conditions of the
14 nation that they are trying to influence. That is a
15 spectrum -- that is a fourth spectrum that the guidelines,
16 again, fail in any way to meaningfully consider or address.

17 That is a spectrum on which these men fall at the
18 far mitigating end. As the Court has heard, their
19 objective, their sole objective was to facilitate a brief
20 transition to a democratic government. It was an explicit
21 overt part of their plan that the interim head of state
22 would not and could not stand as a candidate for office in
23 those elections. Their goal was to bring about positive
24 change, period, and not to benefit or aggrandize themselves.

25 These are four aspects of the case that the

1 guidelines don't consider. The facts that support them are
2 uncontested. The record of these facts is unambiguous. And
3 because the defendants fall at the far mitigating end on
4 each of these, a downward departure from the guidelines
5 under Section 5K2.0 is supported by uncontested facts of the
6 case.

7 THE COURT: For the government.

8 MR. KOVATS: Just to speak briefly on the point
9 about a departure.

10 Certainly I think the general facts here aren't in
11 dispute. The government accepts generally what Mr. Mohring
12 said on behalf of all counsel about the motives of the
13 individuals here.

14 Certainly the United States State Department has
15 spoken their views on the regime of The Gambia. Certainly
16 counsel for the United States here is in no position to
17 expand or contract what the State Department has said. It's
18 the province of the State Department to speak on behalf of
19 the United States and so I'm not going to go further than
20 what's been said.

21 I will say, though, I do have some disagreement
22 with counsel on his view of the notion that a friendly
23 nation is perhaps overbroad and it describes everybody
24 that's not at war and somehow that definition isn't fair.

25 And I think from the government's point of view,

1 the United States can't have people in this country
2 conspiring to tip over other countries. They can't raise an
3 army, a private army here, to do private foreign policy on
4 behalf of their own motives no matter how noble.

5 And whether that is to be directed against Sweden
6 or whether that's to be directed against the regime of
7 Saddam Hussein or some other country that the United States
8 is at peace with but is probably considered a rival, it
9 doesn't matter, Your Honor, it's still not okay.

10 That might influence the judge's decision on a
11 sentence here, but I would submit to you that when a private
12 army is raised and sent abroad to do violence overseas, if
13 that were to happen in Sweden and the United States
14 responded to that coup attempt in the streets of Stockholm
15 in a responsible way, presumably the government of Sweden
16 would allow us to handle it and we would handle it.

17 If that same thing happened in a country with
18 which we're not as friendly or at peace, a Neutrality Act
19 violation would have occurred, that violence was unleashed
20 on the streets of a rival capitol, and we said we've got
21 this, they may say, no, you don't and they may respond in
22 ways that are very dangerous to the interests of the United
23 States.

24 And so I would submit here that the fact this is
25 The Gambia, it matters. It matters as much as the Court

1 thinks it matters, perhaps to a point, but the fact that
2 it's a peaceful country or a country that may be a rival of
3 the United States doesn't diminish the government's interest
4 in making sure that it's handled and people are told this is
5 not okay, because it isn't.

6 The consequences of the act are unpredictable,
7 they're not foreseeable, and here, you know, we don't know
8 if they've even been fully felt by the United States as a
9 result of the conduct of these men.

10 So I would submit to the Court that a basis for
11 departure here that this is mitigating because it's The
12 Gambia and it would be aggregating if it was Sweden is a bit
13 dangerous calculus to play.

14 The other issue I'll take with what counsel has
15 stated was that this was consistent with foreign policy and
16 therefore a departure is warranted. And I would concur that
17 the goals of these men as depicted in their sentencing
18 papers, a democratic regime in The Gambia that respected
19 human rights, is a goal that I believe the United States
20 would support here and everywhere else in the world.

21 The means, however, the means to achieve this goal
22 are absolutely inconsistent with foreign policy, Your Honor,
23 absolutely inconsistent with the government's foreign
24 policy. And I think that's an important distinction.

25 And when the Court considers whether or not to

1 give a departure downward because what was done is
2 consistent with foreign policy, I think that would be in
3 error.

4 And so those are the two issues I have with what
5 defense counsel said. And subject to your questions, I'll
6 leave it at that.

7 THE COURT: That's fine.

8 Anything else from anybody on the defense side?

9 MR. MOHRING: No, Your Honor, not on this point,
10 Your Honor.

11 THE COURT: I'll take it under advisement.

12 What other points? Are there any other issues?
13 Mr. Larsen.

14 MR. LARSEN: Yes. Thank you, Your Honor. I just
15 have a couple of, I guess, less policy-oriented issues to
16 respectfully call to the Court's attention here.

17 In particular, if Your Honor is inclined, let's
18 say, not to grant our departure and go through an arithmetic
19 adding up of offense level points and the like under the
20 guidelines, we obviously have the presentence reports that
21 have been done and I'll be speaking specifically to my
22 client's concerns with a few of the determinations that have
23 been made within the report applicable to Defendant Banka
24 Manneh.

25 The Court heard, I think, a couple of times during

1 Defendant Papa Faal's testimony about Banka and I think the
2 Banka he was referring to was Mr. Manneh, who is sitting way
3 over to your right-hand side in the well area of the
4 courtroom.

5 There are a couple of guideline issues sort of
6 swirling beneath the surface of this case, again, less
7 policy oriented and perhaps more sort of working through
8 what the guidelines themselves actually say and the like.

9 And the first of them that I would like to call to
10 the Court's attention is the government's request here for a
11 four-level upward adjustment based upon Mr. Banka Manneh's
12 purported role in the offense.

13 Now, we've obviously briefed that issue to Your
14 Honor, I think, twice now and I'm not going to rehash all of
15 the cases that we've called to your attention and the actual
16 words of the guideline that we have called to your
17 attention, but there is one additional issue I was thinking
18 about this morning before driving down here to downtown
19 St. Paul and it was to go ahead and take a look at what the
20 statute actually says here.

21 And I think that is crucial to the Court's
22 analysis because the guideline, after all, speaks to the
23 court's assessment of a defendant's role in the offense and
24 that's the words of the guideline itself. That's at 3B1.1.
25 Does it deserve no enhancement or does it deserve all the

1 way up to a four-level upward adjustment?

2 Well, what is the offense that we're talking about
3 here? After all, the guidelines require us to examine the
4 role, quote, in the offense, end quote. And here's what the
5 offense is. It's a conspiracy to violate this statute and
6 it's set forth right in the indictment. It's Title 18,
7 United States Code, Section 960.

8 And here's what Congress teaches us is an offense:
9 "Whoever takes part in any military or naval expedition or
10 enterprise to be carried on from therein," that is, from
11 inside the United States, "against the territory or dominion
12 of any foreign prince or state."

13 That's the offense that the guidelines say the
14 court is to assess when determining whether the role of a
15 player in the offense deserves a higher guideline offense
16 level calculation or a lower guideline offense level
17 calculation.

18 Here's why my client does not deserve a four-level
19 increase. He is a prominent individual in the expatriated
20 Gambian community. His name has been brought up here this
21 morning, even though we chose not to have him take the
22 stand, because one cannot have a discussion about what this
23 community means vis-a-vis the despotic ruler in west Africa
24 without running across Mr. Banka Manneh as a prominent
25 speaker in favor of justice, in favor of the rule of law, in

1 favor of democracy.

2 But that's not what the offense is here. There's
3 no offense associated with this case that really has
4 anything to do with what Mr. Manneh's role of prominence is.
5 Mr. Manneh's role with respect to the offense, that is,
6 taking part in, quote, any military or naval expedition, end
7 quote, really was limited to assisting in purchasing
8 firearms, packing them up into oil barrels, and shipping
9 them overseas.

10 For goodness sake, as the presentence report
11 points out without objection from either party, he's never
12 had any military service at all. He wouldn't have known
13 what to do to, quote, take part in any military or naval
14 expedition and that's why a four-level enhancement here
15 would be inappropriate. His role in the offense is sort of
16 like plain vanilla. It's like yogurt for breakfast in the
17 morning. It doesn't really make a big statement.

18 His political activities? A different assessment,
19 I would grant that. That's obvious from the testimony that
20 you've heard. That's obvious from Exhibit Number 2, which
21 has his name all over it with respect to activities to set
22 things right peacefully in the Gambia.

23 But a four-level role enhancement would be
24 inappropriate on these facts because his role in the
25 offense is not an aggregated role. It's a neutral role

1 really.

2 There's another guideline issue I'd like to call
3 to the Court's attention and that has to do with the
4 four-level upward adjustment based upon the discovery in
5 The Gambia I think by the FBI on the very day we last were
6 before the Court on May the 5th of last year to enter guilty
7 pleas before the Court.

8 This four-level role enhancement for obliterated
9 serial numbers, what's most telling about its
10 inapplicability to my client, Mr. Manneh, is that as the
11 government honorably has brought forth both to Probation and
12 to Your Honor, none of the eight firearms my client was
13 associated with were found to have an obliterated serial
14 number, not even by the FBI.

15 And putting to one side who actually did
16 obliterate the serial numbers on the ground in The Gambia,
17 for all we know it could have been Gambian law enforcement
18 actors that were actually involved with that. We just don't
19 know who did it.

20 But what we do know is with respect to the eight
21 firearms Mr. Manneh is associated with, based upon what the
22 plea agreement says regarding those eight firearms really,
23 none of them bore obliterated serial numbers and that's why
24 that four-level role enhancement would be inappropriate
25 based upon these facts.

1 And, again, just one last point. Stepping away
2 from the policy and sort of getting into some of the minutia
3 of what the guidelines require the court to look at in
4 coming up with an appropriate guideline calculation concerns
5 the number of firearms here.

6 I think the presentence report, if I remember
7 correctly, Your Honor, speaks to, I think, some 26 firearms
8 having been found on the ground in The Gambia. My client
9 was associated with eight of those.

10 We're more than willing to stipulate to the
11 four-level role -- I'm sorry, the four-level upward
12 adjustment that the eight firearms should bring about, but
13 coming to the conclusion that my client's relevant conduct
14 extends to 26 firearms, I just don't see where in the
15 evidence that conclusion can be supported.

16 So a four-level role adjustment -- I'm sorry, a
17 four-level upward adjustment given the number of firearms is
18 entirely appropriate based upon the stipulations in the plea
19 agreement, but the additional two levels that the probation
20 officer has recommended here we do respectfully object to.

21 So that's sort of some of the minutia involving
22 the case. I'm sorry to have to drag us all through it, but
23 some of this is numbers and I respect the Court's
24 obligations in that regard. We wanted to at least get our
25 position as a matter of record before Your Honor.

1 There are additional guideline issues I would like
2 to call to your attention that now come closer to what
3 Mr. Mohring was speaking about earlier when he addressed
4 Guideline Section 5K2.0.

5 And I would like to call these to your attention,
6 Your Honor, because I think in the aggregate they all
7 counsel exactly the same type of relief that Mr. Mohring is
8 seeking, that is, a substantial departure based upon what
9 largely amounts to a record of undisputed evidence that
10 you've heard this morning.

11 Now, the first of those guideline sections, Judge,
12 is 5K2.10 and that one is captioned Victim's Conduct and it
13 speaks to the question about whether the conduct of a victim
14 can provoke the offense such that the culpability of the
15 defendant should be concluded to be less as opposed to more.

16 And we know what the victim is in this case
17 because, again, it's not disputed. It's right -- at least
18 in Mr. Manneh's presentence report it is, quote, The Gambia
19 and the government of The Gambia. So when the government of
20 The Gambia is thought to have provoked this offense, that is
21 a factor in mitigation pursuant to Guideline Section 5K2.10.

22 The second guideline provision I'd respectfully
23 call to the Court's attention is the very next guideline
24 section, 5K2.11, and that guideline addresses actions that
25 are undertaken for the purpose of avoiding a greater harm or

1 some, I guess, commentators would call it the defense of
2 necessity.

3 It may not be strong enough and may not get a jury
4 instruction in front of a jury and may not see the light of
5 day in determining the question of guilt, but nevertheless
6 it's thought to be sufficiently important by the Commission
7 that it should be considered in determining whether a
8 defendant's culpability is thought to be less and not just
9 normal or not just aggravated in nature.

10 The third guideline section I'll call to the
11 Court's attention is at 5K2.12 and that guideline is
12 captioned Coercion/Distress -- Duress. Excuse me.

13 THE COURT: Say that again.

14 MR. LARSEN: Sure. That's at 5K --

15 THE COURT: What's the title of it?

16 MR. LARSEN: Coercion/Duress. And what that
17 guideline says is very similar to the lesser harms guideline
18 section, that it is appropriate to consider whether
19 circumstances on The Gambia ground there in west Africa were
20 so aggregated that it presented a measure of coercion upon
21 these individuals. Maybe not enough to get an acquittal
22 and, in fact, all of these defendants have pled guilty
23 because they are guilty, but nevertheless appropriate in the
24 view of the drafters of the guideline to be considered by
25 the court in mitigation here.

1 And finally, Your Honor, if we sort of take all of
2 those three sections, the question becomes whether the
3 guidelines permit the court or perhaps even encourage the
4 court to consider them in the aggregate.

5 And I would propose to you that the guidelines in
6 black and white do precisely that at Guideline Section 5K2.0
7 subsection (c), where the court is asked to take a look at
8 whether a combination of factors, maybe none of which
9 standing alone are sufficiently compelling, but nevertheless
10 when taken together can be considered in the aggregate as
11 grounds to give these defendants a downward departure
12 pursuant to the guidelines.

13 Unless the Court has any additional questions,
14 I've probably run more numbers and statistics by you than
15 even I want to think of.

16 THE COURT: Why didn't you bring this to my
17 attention before now?

18 MR. LARSEN: Well, Your Honor, in part it's
19 because we wanted to make a presentation first of what we
20 think the record should be in the case, and you were kind
21 enough to receive all of that evidence.

22 I concur with Mr. Mohring's view that 5K2.0 asks
23 the court to take a look at factors that are nowhere
24 considered in the guidelines and I think all of the four
25 grounds that Mr. Mohring articulated fit that criteria, that

1 is, are there factors associated with this case that involve
2 circumstances not even covered by the guidelines.

3 But there are additional facts and circumstances
4 that the record shows us as well and that's what I hopefully
5 have been able to outline for Your Honor.

6 THE COURT: You're not answering my question. Why
7 didn't you bring it to my attention before now?

8 MR. LARSEN: Your Honor, we have briefed up the
9 issue additionally. It's in all of our papers.

10 THE COURT: Okay.

11 MR. LARSEN: I certainly could have gotten up to
12 the lectern first. If I should have done that, I apologize
13 to the Court.

14 THE COURT: Well, I bring it up in the sense of
15 there's some talk about doing the sentencing this afternoon,
16 which we're not going to do at this stage of the game.

17 MR. LARSEN: Yes. Thank you, Your Honor.

18 THE COURT: Anything else we have to cover?

19 MR. LARSEN: No. Thank you, Your Honor.

20 THE COURT: Mr. Mohring, are you pointing at me or
21 are you --

22 MR. RICHMAN: Your Honor, I have some issues to
23 raise, but Mr. Kovats may want to respond to --

24 THE COURT: Let's get all the defendants in here
25 and then you can come back and take them all on at once.

1 MR. KOVATS: Very well, Your Honor.

2 THE COURT: Mr. Richman.

3 MR. RICHMAN: Your Honor, I wanted to address
4 3553(a). We've been discussing the sentencing guidelines,
5 but the sentencing guidelines in this case really do not
6 provide the Court with any guidance.

7 With respect to the Neutrality Act violation of
8 Count 1 of the superseding indictment, there is no
9 guideline that applies to that offense because of how rare
10 it is.

11 With respect to Count 2, the defendants have
12 pleaded guilty to a conspiracy to use a firearm during a
13 crime of violence or a drug offense. And while there is a
14 guideline that applies to that, it is the same guideline
15 that applies to a defendant using a gun in an armed robbery
16 or a sexual assault, a defendant using a gun to promote drug
17 activity.

18 So obviously that guideline does not contemplate
19 the conduct that we have before this Court of an attempt to
20 bring freedom to the people of The Gambia and so we're left
21 with 3553(a) to advise the Court as to a sentence under that
22 statute that is sufficient, but not greater than necessary,
23 to achieve the purposes of sentencing.

24 We've talked at length about the seriousness of
25 the offense and the nature and circumstances of the offense.

1 And while obviously it is a serious offense, that
2 seriousness is mitigated substantially by the motives of the
3 defendants in this case.

4 Obviously when we view the seriousness of an
5 offense we look at both the *actus reus* and the *mens rea*.
6 And in this case the defendants acted with a laudable, noble
7 intent.

8 Even the government in arguing that this offense
9 has affected the interests of the United States, when you
10 parse that, what the government is saying is that the
11 failure of the coup has affected the interests of the United
12 States by unleashing the unpredictability of this despotic
13 ruler.

14 Essentially the government is saying that you
15 don't poke a rabid tiger because you don't know what that
16 tiger will do, but we would all agree that we would be
17 better off without the rabid tiger. And that was the intent
18 of the defendants here.

19 But with respect to the 3553(a) factors, the
20 government has focused primarily on the issue of deterrence,
21 both specific and general deterrence, and that's the issue
22 that I really want to focus on, although I would have to say
23 that there is nothing that I can say that would be as
24 eloquent as what we've heard in the testimony of Mr. Njie
25 and Mr. Faal with respect to whether this Court need be

1 concerned about the likelihood of recidivism in this case.

2 With respect to specific deterrence, Your Honor,
3 first of all, this is something of a myth since every
4 empirical study reflects that an increase in punishment has
5 no discernible deterrent effect and that deterrence comes
6 primarily from the certainty of prosecution and from the
7 impact that the defendants testified to earlier today of
8 having gone through what they did and standing before this
9 Court awaiting judgment.

10 But the government's position seems to be that
11 because the defendants made such a great sacrifice, even
12 risking their own lives and their families here in the
13 United States, their comfortable lives, because they made
14 such a great sacrifice, that that increases the
15 likelihood -- this seems to be the government's position --
16 that they will do so again and so therefore you need to
17 impose a longer sentence.

18 But that leads to perverse results. That argument
19 basically stands the laudable goals that these defendants
20 had on its head by saying that if they had base motives, if
21 they were acting out of greed or out of jealousy, like most
22 defendants that appear before this Court, that that would be
23 more easily deterred than the noble goals that these
24 defendants had.

25 And I would suggest, Your Honor, that that is not

1 an appropriate argument, that these men have shown
2 themselves to be honorable men, to have been working in
3 pursuit, however mistaken their judgments may have been, in
4 pursuit of noble goals.

5 They have shown over the course of the last nearly
6 year and a half that they can be trusted. This Court need
7 not worry about what their conduct will be on probation
8 because we have seen over the course of the last year and a
9 half their conduct on pretrial release, which has been
10 flawless.

11 The magistrate judge in this case made the
12 determination way back when that these men were not a danger
13 to the community and they were released on conditions, and
14 they have shown themselves to be honorable men who have made
15 good on their commitment to this court. They are a danger
16 to no one.

17 With respect to recidivism, Your Honor,
18 statistically these defendants, their risk of recidivism is
19 exceedingly low. And what is relevant to that
20 consideration, as the sentencing guidelines' own statistics
21 reflect, is the fact that they are first offenders with no
22 criminal history points, that they are over the age of 40,
23 that they had stable employment at the time of this offense,
24 that they are not drug users, that they are educated, that
25 they are married, that in every respect they are stable

1 members of this community. That's what gives this Court
2 confidence that these men will not be back before this
3 Court.

4 What is significant, Your Honor, and compelling is
5 that these men had no idea that they were violating U.S.
6 law. Everything they did they did in the open. They
7 traveled under their own names. They used their own bank
8 accounts. They used their own credit cards.

9 When the government tried to -- took steps to
10 follow the paper trail, that was no problem because it was
11 clear because these men had no reason to believe that they
12 were violating United States law.

13 In addition, as Mr. Njie has testified to, they
14 believed that their conduct was being supported by the
15 United States. They had information from a military attaché
16 from the Senegal -- from the U.S. Embassy in Senegal that
17 the State Department supported their efforts.

18 As Mr. Sxxxxx said, he had been interrogated by
19 the FBI, who obviously was aware of this plan, and they did
20 not arrest him, did not prevent him from going to Dakar,
21 which was consistent with their view that the U.S.
22 government would support what they were doing.

23 And it was also consistent with their view that
24 the goals that they were attempting to achieve were
25 completely consistent with the values of the United States

1 government, which were the values of their adopted country,
2 a country that they loved and that they were loyal and
3 patriotic to.

4 This was a combination of circumstances, as
5 Mr. Njie has testified to, that is not going to repeat
6 itself. These men understand that their actions were a
7 mistake, that they acted honorably, but they now understand
8 United States law, they now understand the position of the
9 United States. They are men who take their commitment to
10 this Court seriously, who believe in the rule of law.

11 Mr. Barrow, my client, knowing that some of his
12 compatriots had already been arrested, came back to the
13 United States to face these charges because he believes in
14 the rule of law. And that is why this Court need not
15 concern itself with the risk of recidivism. These men are
16 not going to be back before this Court.

17 With respect to general deterrence, Your Honor, as
18 I said at the outset, prosecutions under the Neutrality Act
19 are virtually unheard of. There is really no one to deter
20 even if deterrence worked as a principle. In any event, the
21 message has been received loud and clear that attempts to
22 overthrow foreign governments will not be tolerated by the
23 United States.

24 And so the government attempts to analogize this
25 case to some misguided young men who thought it was the

1 thing to do to join ISIS or al-Shabaab, which I would
2 suggest, Your Honor, that to attempt to analogize what these
3 men attempted in this case with what is going on in a
4 courtroom in Minneapolis is simply ridiculous.

5 This case is more akin to individuals going in an
6 effort to fight ISIS, to fight a terrorist organization,
7 because that is what these men were doing, was attempting to
8 free people from a despotic ruler. Their goals were
9 laudable.

10 They are not people who have an antipathy to the
11 United States. Quite the contrary, they support the values
12 of the United States and were acting consistent with those
13 values in taking the steps that they did.

14 Those who are misguided enough to attempt to join
15 ISIS are not going to be dissuaded by anything that this
16 Court does, because they are misguided. They are not ones
17 to take any lesson whatsoever from what any United States
18 court does in this case or any other case.

19 And it would be fundamentally wrong, I would
20 suggest, to ignore the unique circumstances of this case and
21 use these defendants as a vehicle to send a message to some
22 unknown others. This is a case that, because of its unique
23 circumstances, warrants a probationary sentence.

24 And finally, Your Honor, in conclusion, I would
25 like to say that I think that the government is creating a

1 false dichotomy between probation on the one hand and
2 deterrence on the other.

3 But probation is not the absence of a punishment.
4 Probation is a punishment. In the Gall case, the Supreme
5 Court case, in which the Supreme Court upheld a substantial
6 downward departure to a probationary sentence in a serious
7 drug case, the Supreme Court made very clear that probation
8 is a punishment. It causes severe restrictions on one's
9 liberty. It reduces your Fourth Amendment privacy rights
10 because you can be searched. It subjects you to close
11 supervision.

12 It is, I think, a false dichotomy for the
13 government to suggest that a probationary sentence does not
14 have a deterrent effect. These men stand before this Court
15 now labeled as felons. They have seen their friends shot
16 down. They will carry the scars of this offense with them
17 for a very long time.

18 And it's our position that a probationary sentence
19 is fully consistent with the sentencing factors enumerated
20 in 3553(a). Thank you, Your Honor.

21 THE COURT: Thank you.

22 Counsel.

23 MR. KOVATS: Your Honor, what I would like to talk
24 about right now are guideline issues. I'm not here to argue
25 3553(a) factors. I will do that when we argue at the close

1 of sentencing. And so what I want to do is address some of
2 the things that counsel has raised as it relates to the
3 guidelines.

4 And so first as to -- I guess maybe perhaps
5 easiest with respect to Defendant Barrow, I think that we're
6 in broad agreement as to the guidelines and how they apply.
7 I don't want to necessarily -- I think counsel will correct
8 me if I'm wrong.

9 I do have -- just for purposes of the record,
10 May 5th of 2015 an FBI agent goes to The Gambia, takes
11 pictures of the weapons that reveal that a small number of
12 them had serial numbers that were obliterated.

13 The government had long since entered into
14 agreements with all of these defendants, all but one had
15 entered a plea by the same -- or before the government
16 learned of this evidence, and we've always argued for the
17 nonapplication of this guideline.

18 I just wanted to give you sort of the background
19 on how this came about. We've said in all of our papers
20 that we stand by our agreement. We don't think the Court
21 should apply them. We're offering no evidence of this fact
22 to the Court.

23 As the government has said in at least papers as
24 to Mr. Barrow first and as to Mr. Manneh, that the weapons
25 they purchased and delivered to The Gambia in support of

1 this, the serial numbers were plainly visible and we have no
2 information that they any idea that some other weapons had
3 serial numbers that were obliterated.

4 THE COURT: So that issue is out, then?

5 MR. KOVATS: I believe it's out, Your Honor, and
6 so I think that we'd recommend to the Court that it's out.

7 And so I think that's it as to Defendant Barrow on
8 the guidelines.

9 I argued moments ago as to Defendant Faal with
10 Mr. Mohring in response to his arguments about guideline
11 departures under Chapter 5, so I feel like I've addressed
12 guidelines as to Mr. Faal. Obviously the firearms thing I
13 didn't discuss then, but he would fall in that same camp
14 where we recommend that those do not get applied for the
15 same reasons.

16 As to Mr. Njie, there remains the issue of the
17 leader/organizer role and the government submits that the
18 four-level adjustment upward for leader/organizer applies.
19 Probation concurs.

20 The government's papers submit evidence of why it
21 should apply and I would submit that some of the things that
22 Mr. Njie said in his examination provide further evidence of
23 his role when he talked about in August he convened a
24 meeting at his home. I think he said home and then
25 corrected it to a hotel in Texas.

1 So the group is going to him. They discuss
2 Gambia. It's a fact-gathering session for him, meant to
3 guide him in formulating a plan of action, and he was made
4 aware of other efforts around the globe. He discussed this
5 meeting with Jagne for the first time face-to-face in
6 Austin, again, a meeting at his house, and at this point he
7 learned about the plan to actually oust Jammeh. There was a
8 second meeting in Austin, again at his house, where again
9 everybody is going to him. There was a meeting with Sxxxxxx
10 where he met him at his house in Austin.

11 He's the center of gravity for this, Your Honor,
12 not only financially, but I would say he supplied the
13 leadership. The evidence the government has submitted in
14 its papers support this and I think that to conclude
15 otherwise I think would be ignoring the plain truth of what
16 was going on here.

17 So that leaves, at least from the government's
18 view as to guidelines, Mr. Manneh. And the government would
19 concede the record as to Mr. Manneh on leadership and
20 organizer is not as clear as it is for Mr. Njie and what I
21 am going to do is I'm going to forward why the government
22 believes it applies and obviously the Court gets to decide
23 whether or not it does. And so what I propose to do, Your
24 Honor, is I'll show you a few things that have already been
25 before the Court, but explain why I think they apply.

1 And what we have here is the creation of a
2 military strategy for overthrowing the regime in The Gambia.
3 The people involved in this planning are all military men.
4 And what I believe was going on here, what I understand is
5 going on from I think a reasonable interpretation of the
6 evidence is that they were behaving in a way that military
7 men do when making a plan and they follow the guidance and
8 training and experience that they have gained by their
9 service in the military.

10 And when you do that, you produce a plan for
11 others to validate. You produce a plan for your seniors to
12 say, okay, let's do that or for your seniors to say actually
13 let's adjust it to the right or to the left. They get the
14 intent of their boss and they attempt to achieve that.

15 And so here, Your Honor, we have -- it's
16 Attachment 1, I think this is to Defendant Barrow's
17 sentencing position paper, and we talk about things that I
18 think are -- that I would submit are -- I'll point to this.
19 This is Army doctrine here, Your Honor. They talk about
20 execution. They talk about ways, lines of effort, and means
21 on page 4. This is Army doctrine. This is how people plan
22 a military operation. This isn't something penned in on the
23 back of a napkin, Your Honor. This isn't without guidance
24 from what they've learned in the military about how to plan
25 a military operation.

1 And so Barrow and others who had this experience
2 made a plan and it went to Defendant Njie and Defendant
3 Manneh to validate. And when this plan was delivered, in
4 Attachment 3 to the government's sentencing papers for
5 Defendant Manneh, he says, "Che, this plan you sent does it.
6 I made a minor adjustment (added the implementation
7 timetable to the list - just a suggestion). I have also
8 attached the list of ministries and the other document that
9 I originally prepared."

10 And so what I would argue to the Court is this is
11 validation by the leadership of the plan put together by the
12 planning cell, by the people responsible for putting
13 together the military plan, and they validated it. They
14 made some recommendations for changes, but they're the ones
15 who decide, they were the deciders.

16 The other point I'll have on guidelines as to
17 Mr. Manneh has to do with the firearms. I think it's a dead
18 issue. I have one point I would like to raise and that's
19 because -- and maybe this is more of a policy thing, but as
20 I stand here as a representative of the United States and a
21 representative of the U.S. Attorney's Office and in my own
22 capacity as an assistant United States attorney, the
23 accusation that we breached the agreement I take very
24 seriously and so I am here to address that.

25 And I know counsel took a more conciliatory tone

1 today, but I would say that when the government said in its
2 papers that the four-level adjustment should not be applied
3 and we stand by the calculations in the agreement, that was
4 unambiguous. No other counsel for any other defendant took
5 it any other way.

6 But here in their papers they suggest the
7 government meant something different when they said that
8 they should not apply and we take issue with that, Your
9 Honor, and I think the Court should, I think, repudiate the
10 notion that the plea agreement was violated when the United
11 States --

12 THE COURT: That issue I don't consider to be in
13 front of me. I'm not going to repudiate anything.

14 MR. KOVATS: Yes, Your Honor.

15 And so I think if I go through my list, I think,
16 as to the guidelines -- well, I will submit to the Court if
17 you have any questions of the government as to our guideline
18 calculations, we stand by them in the plea agreement, we
19 believe that they're appropriate here, and we believe that
20 although there's a dispute as to leader/organizer as to
21 Mr. Njie and to Mr. Manneh, I believe that they should be
22 applied in both those instances.

23 Thank you, Your Honor.

24 MR. BIRRELL: If I might just address you for a
25 minute? May I?

1 THE COURT: You may.

2 MR. BIRRELL: Thank you. I wasn't entirely sure
3 about this procedure because it got into a little bit of an
4 individual assessment on Mr. Njie's role.

5 And I wanted to just point out to the Court that
6 this was a military operation. The Court knows from the
7 presentence report that Mr. Njie was in the military for a
8 week and then broke his ankle and was forced to separate
9 from the service.

10 But the testimony that he presented today was that
11 Sanneh was the operational leader of the enterprise.
12 Mr. Njie has no background at all upon which to design or
13 compose a military operation of any kind.

14 Where the meetings were taking place are not
15 determinative of any leadership role. It may be, for
16 example, that as an older man in the culture it was
17 customary for people to come and see him.

18 But the totality of the analysis on role in the
19 offense, which was a military offense, counsels, as we've
20 set out again and again in our papers, that Mr. Njie was not
21 capable of a leadership role in the offense and the Court
22 should not apply the enhancement to him.

23 Thank you.

24 THE COURT: Okay. Anything else?

25 MR. KOVATS: No, Your Honor.

1 MR. MOHRING: No.

2 THE COURT: I want to talk with counsel -- I don't
3 think everybody else has to stick around -- just about the
4 schedule for sentencing and some other issues. So why don't
5 you come back here and we'll go into a conference room.

6 This won't take very long. Anybody who is in the
7 audience waiting for the lawyers, they will be out of here
8 in 10 or 15 minutes, but I want to talk to them off the
9 record.

10 (Court adjourned at 12:05 p.m.)

11 * * *

12

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14 I certify that the foregoing is a true and correct
15 copy of the transcript originally filed on 07/21/2016 and
16 incorporating redactions requested by Attorneys Mark Larsen
and Andrew Mohring. Redactions appear as XXX or blackened
out in the transcript.

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Certified by: s/ Lori A. Simpson

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Lori A. Simpson, RMR-CRR

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